ATTORNEYS FOR APPELLANT:

MICHAEL C. KEATING
YVETTE M. LAPLANTE
Keating & LaPlante, LLP
Evansville, Indiana

ATTORNEY FOR APPELLEE:

BOYD A. TOLER
Toler Law Office
Petersburg, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TONY D. CAMP,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 63A01-0806-CV-269
	)	
LILY A. CAMP,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE PIKE CIRCUIT COURT
The Honorable Joseph L. Verkamp, Referee
Cause No. 63C01-0704-DR-98

February 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

This appeal arises out of a decree of dissolution of the marriage between Tony D. Camp ("Husband") and Lily A. Camp ("Wife"). Husband appeals, raising the following restated issues for our review:

I. Whether the parenting time schedule established by the trial court was in the best interest of the children;

II. Whether the trial court erred by treating as a marital asset the house Husband built prior to the marriage on real estate owned by a family trust in which he had no interest; and

III. Whether the trial court erred by including in the marital pot the offspring of cows born after the final separation date.

We affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

Husband and Wife were married in 1999, separated in 2006, and Husband filed a petition for dissolution of the marriage in 2007. Two children, C.C. and E.C., were born during the course of the marriage.

Husband, who works the night shift, 6:00 p.m. until 5:15 a.m., had visitation with the children every weekend prior to the final hearing. Two weekends a month, Husband would begin visitation with E.C. at 10:00 a.m. on Friday, and would begin visitation with C.C. when she was released from school that day. Visitation with C.C. would continue until Husband took her to school on Monday morning, and with E.C. until 2:00 p.m. Monday afternoon. For the other two weekends in the month, Husband would begin visitation with both children on Saturday evening, at around 10:30 p.m. and end for C.C. when Husband took her to school on Monday morning, and for E.C. at 2:00 p.m. Monday afternoon.

The marital residence was located on real estate owned by a family trust established by Husband's parents. Husband paid for the building of the home, but had no ownership interest in the real estate. Wife contributed to finishing the interior of the marital residence by contributing both money and labor. An appraiser hired to appraise the marital residence determined that the value of the marital residence, not including the real estate upon which it was situated, was $80,000.

Husband and Wife also owned six heifers, a bull, and three calves. Three of the heifers were purchased during the marriage. The remaining cattle are the descendants of the first three heifers. The parties listed "cattle" as a marital asset with a value of $3,884.50 or $3,885.00. *See Appellant's App.* at 7, 14.

After the final hearing, the trial court issued its decree of dissolution. Concerning visitation, the trial court found that Husband shall have parenting time as agreed to by the parties. *Id.* at 16. However, in the event the parties cannot agree, Husband was to have parenting time on alternating weekends from Friday at 6:00 p.m. until Monday at 7:00 a.m. *Id*. Husband was given one additional Sunday visitation on either the second or third Sunday of the month from 8:00 a.m. until 6:00 p.m. *Id*. The Indiana Parenting Time Guidelines applied with respect to holiday and extended parenting time. *Id*.

The trial court ordered an even division of the property and valued Husband's interest in the marital residence at $45,000. Further, the trial court awarded the "cattle" to Husband using the parties' stipulated value. Husband now appeals.

DISCUSSION AND DECISION

I. Parenting Time

In all parenting time controversies, courts are required to give foremost consideration to the best interest of the child. *Marlow v. Marlow*, 702 N.E.2d 733, 735 (Ind. Ct. App. 1998), *trans. denied* (1999). When reviewing the trial court's resolution of a parenting time issue, we reverse only when the trial court manifestly abused its discretion. *Id*. If the record reveals a rational basis supporting the trial court's determination, no abuse of discretion occurred. *Id*. We will not reweigh evidence or reassess the credibility of witnesses. *Id.*

Husband claims that the trial court's order on parenting time is not in the best interest of the children. At the final hearing, Husband had requested that he and Wife exercise visitation in alternating seven-day periods. The only part of the pre-final hearing visitation schedule that Wife was dissatisfied with was the weekend visitation that began on some Saturdays at approximately 10:30 p.m. Wife stated that the 10:30 p.m. beginning time interfered with the children's bedtime.

A noncustodial parent is generally entitled to reasonable visitation rights. *See* Ind. Code § 31-17-4-1. Indiana has long recognized that the rights of parents to visit their children is a precious privilege that should be enjoyed by noncustodial parents. *Duncan v. Duncan*, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006). The Preamble to the Indiana Parenting Time Guidelines states that the guidelines are based "on the premise that it is usually in a child's best interest to have frequent, meaningful and continuing contact with each parent." Generally, a parenting time order established by a trial court should mirror the Parenting

Time Guidelines. *See Haley v. Haley*, 771 N.E.2d 743, 752 (Ind. Ct. App. 2002). However, that starting point may be overcome by the facts particular to the circumstances. *Id*.

In the present situation, the schedule that the parties had been following prior to the final hearing was working, with the exception of the 10:30 p.m. pick-up time on some weekends. We find that the trial court lacked a rational basis for establishing a parenting time schedule that commenced during Husband's work schedule and thereby abused its discretion. Husband would encounter difficulty having meaningful contact with the children under those circumstances. Consequently, we remand to the trial court to restore the parenting time schedule the parties had been using prior to the final hearing, with the exception of the 10:30 p.m. Saturday pick-up time. On those weekends, Husband's visitation will begin at noon on Sunday.

II. Marital Residence

The trial court included the marital residence in the marital pot and awarded it to Husband. The trial court valued the Husband's interest in the marital residence at $45,000.00. Husband claims that the trial court erred by including the marital residence in the marital pot. More specifically, he contends that because the marital residence was built on land that was part of a family trust, Husband had no vested interest in the property. He claims, in the alternative, that even if he had a vested interest in the property, the property was acquired prior to the marriage, and should be excluded from the marital pot.

We apply a strict standard of review to a court's distribution of property upon dissolution. *Smith v. Smith*, 854 N.E.2d 1, 5 (Ind. Ct. App. 2006). The division of marital

assets is a matter within the sound discretion of the trial court. *Id*. The party challenging the trial court's property division bears the burden of proof. *Id*. That party must overcome a strong presumption that the court complied with the statute and considered the evidence on each of the statutory factors. *Id*. at 5-6. The presumption that a dissolution court correctly followed the law and made all the proper considerations when dividing the property is one of the strongest presumptions applicable to our consideration on appeal. *Id*. at 6. Thus, we will reverse a property distribution only if there is no rational basis for the award. *Id*.

The evidence established that Husband had the residence built in 1996 or 1997, but the interior finish work was not completed at that time. Wife moved in with Husband some time in 1998. Wife provided money for materials and completed some of the finish work on the residence herself. Wife testified that she had put in $25,000.00 of materials and labor into the marital residence. Husband testified that it cost between $60,000.00 and $70,000.00 to build the residence. The construction that occurred prior to Wife moving in cost $30,000.00, and Wife estimated that Husband put in $30,000.00 toward the cost of building the residence. The appraiser valued the marital residence at $80,000.00, not including the real estate. The County Assessor had valued the home at $82,300.00 without the land. The trial court did not err in valuing the Husband's interest in the marital residence at $45,000.00.

Here, the marital residence was treated as personal property, and as such, was properly included in the marital estate. Husband argues that an unvested interest in property is not divisible as a marital asset, and cites to *Hacker v. Hacker*, 659 N.E.2d 1104, 1107 (Ind. Ct. App. 1995), to support that proposition. While that is a correct statement of the law, it is also

true that a house, if treated as personal property, may be found to be personal property. *See e.g., Brown v. Corbin*, 121 Ind. 455, 23 N.E. 276, 277 (1890); *Price v. Malott*, 85 Ind. 266, 1882 WL 6384, at *2 (1882); *Bd. of Comm'rs of Delaware County v. Lions Delaware County Fair, Inc.*, 580 N.E.2d 280, 284 (Ind. Ct. App. 1991), *trans. denied*.

Husband consistently maintained that he owned the marital residence, but not the ground upon which it sits. The County Assessor bills Husband separately for the residence on the land. Husband also listed the marital residence as a marital asset in his submission to the trial court. Husband pays real estate taxes on the "lease hold improvement," and not the land. Husband had a vested interest in the marital residence as personal property, and the marital residence was properly included as such in the marital pot for distribution. The trial court did not err.

III. Cattle

Lastly, Husband argues that the trial court erred by including in the marital pot all of the cattle owned by Husband at the time of the final hearing. Husband claims that some of the cattle were acquired by purchase or breeding after the separation.

The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *Nornes v. Nornes*, 884 N.E.2d 886, 888 (Ind. Ct. App. 2008). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances presented. *Id*. When we review a challenge to the trial court's division of marital property, we may not reweigh the evidence or

assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of marital property. *Id*.

Ind. Code sec. 31-17-7-4(a) excludes from distribution all property acquired by either spouse in his or her own right after final separation. Consequently, to the extent the trial court included cattle born or acquired after the date of final separation, the trial court erred. However, there is no evidence in the record to indicate how many cattle were included in the value of the marital cattle. Further, the parties stipulated to the value of the cattle, within fifty cents of each other, and that was the valuation used by the trial court. Accordingly, there is no showing of prejudice.

Affirmed in part, reversed in part, and remanded.

BAKER, C.J., and NAJAM, J., concur.